

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

AMY F. HINTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:18-CV-994-WKW
	)	[WO]
ALABAMA STATE UNIVERSITY,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

In November 2018, Plaintiff Amy Hinton filed this lawsuit under Title VII of the Civil Rights Act of 1964. (Doc. # 1.) She alleges that Defendant Alabama State University (ASU) discriminated against her based on race (Count One) and retaliated against her when she complained about discrimination (Count Two). (Doc. # 1, at 8, 11.) On December 27, 2018, ASU filed an answer. (Doc. # 5.) ASU also moved to dismiss Count Two for failure to state a claim upon which relief can be granted. (Doc. # 6.)

ASU's motion to dismiss is due to be dismissed as improvidently filed. Under Federal Rule of Civil Procedure 12(b), a motion to dismiss for failure to state a claim "*must be made before pleading* if a responsive pleading is allowed." Fed. R. Civ. P. 12(b) (emphasis added). An answer is a required responsive pleading. Fed. R. Civ. P. 7(a)(2), 12(a)(1). Because ASU did not file its motion to dismiss before filing its

answer, its motion to dismiss is untimely. *See Leonard v. Enter. Rent a Car*, 279 F.3d 967, 971 n.6 (11th Cir. 2002) (“After answering the complaint, the defendants filed Rule 12(b)(6) motions to dismiss the plaintiffs’ claims. Under Rule 12(b), these motions were a nullity; by filing an answer, the defendants had eschewed the option of asserting by motion that the complaint failed to state a claim for relief.”); *Mitchell v. Ala. Dep’t of Labor*, No. 16-cv-666, 2018 WL 4621928, at \*4 (M.D. Ala. Aug. 29, 2018) (“[Rule] 12(b) prohibits a motion to dismiss for failure to state a claim upon which relief can granted after a party has filed an answer.”), *report and recommendation adopted*, 2018 WL 4621819 (M.D. Ala. Sept. 26, 2018).

It is therefore ORDERED that Defendant Alabama State University’s Motion to Dismiss (Doc. # 6) is DENIED.

DONE this 30th day of April, 2019.

/s/ W. Keith Watkins  
UNITED STATES DISTRICT JUDGE